DOCUMENT RESUME

ED 459 983 RC 023 337

TITLE	Bonds To Provide Funding for the Construction of Schools. Hearing before the Committee on Indian Affairs on S. 2580 To Provide for the Issuance of Bonds To Provide Funding for the Construction of Schools of the Bureau of Indian Affairs of the Department of the Interior. United States Senate, One Hundred Sixth Congress, Second Session.
INSTITUTION	Congress of the U.S., Washington, DC. Senate Committee on Indian Affairs.
REPORT NO	Senate-Hrg-106-779
PUB DATE	2000-09-06
NOTE	61p.
AVAILABLE FROM	U.S. Government Printing Office, Superintendent of Documents, Congressional Sales Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*American Indian Education; *Bond Issues; *Construction Needs; Elementary Secondary Education; Federal Aid; Hearings; *School Buildings; Tribally Controlled Education
IDENTIFIERS	*Bureau of Indian Affairs Schools; Congress 106th; Proposed Legislation

ABSTRACT

A U.S. Senate committee hearing received testimony on the Indian School Construction Act, which would establish a bonding authority for leveraging existing tribal education funds through bonds to fund tribal school construction, maintenance, and repair. The testimony from U.S. senators and representatives of the Department of the Interior and American Indian organizations discussed the following: the Bureau of Indian Affairs (BIA) school construction and repair backlog of over $1 billion; the terrible condition of school facilities on Indian reservations; the need to regard any bonding initiative as a supplement, not a replacement, to federal appropriations; the specific details of how tribes would issue bonds that would be secured by federal money in an escrow account and would have interest payments covered by federal tax credits; the question of federal loan guarantees; and the nature of the federal government's trust responsibility concerning educational assistance to tribes. The complete text of the Act is included. (SV)

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ED 459 983

S. HRG. 106–779

BONDS TO PROVIDE FUNDING FOR THE CONSTRUCTION OF SCHOOLS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2580

TO PROVIDE FOR THE ISSUANCE OF BONDS TO PROVIDE FUNDING FOR THE CONTRUCTION OF SCHOOLS OF THE BUREAU OF INDIAN AFFAIRS OF THE DEPARTMENT OF THE INTERIOR

SEPTEMBER 6, 2000
WASHINGTON, DC

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BONDS TO PROVIDE FUNDING FOR THE CONSTRUCTION OF SCHOOLS

WEDNESDAY, SEPTEMBER 6, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Inouye.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. We're going to reverse the order and do the business section of our meeting today last, since Senator Inouye is going to be running about 15 minutes late, so we will start with our hearing part on S. 2580.

Today we will receive testimony on the Indian School Construction Act of 2000, introduced earlier this year by Senator Tim Johnson of South Dakota, to authorize Indian tribes to issue bonds to raise funds for school construction.

I see Senator Johnson is here with us. Do you want to come on up to the dais, Tim? You can sit there at the table or you can come up, your choice.

I don't think it's any secret to all of us who live out in Indian country that many, if not most, schools in Indian communities are badly in need of repair. It is also well known to members of this committee and others that there is a backlog of almost $1 billion in school facilities needs in these communities.

The videotape that we will show in just a few minutes will portray the poor conditions of Indian schools. It is important to note that these schools can be found anywhere in Indian communities anywhere in the country.

Unlike public schools throughout the Nation, which are funded and administered locally, the U.S. Government has legal responsibility for two school systems—the Indian schools and schools that educate children and men and women of the Armed Forces. In addition to our legal obligations, it is simply unrealistic to expect Indian youngsters to learn, to grow and become productive citizens if their schools are in the condition that most of them are now.

There are bright spots. In the short run, after 7 years of level funding for Indian schools, the fiscal year 2001 presidential budget

55

finally has made a substantial request for Indian school construction and repair. In its fiscal year 2001 Interior appropriations bill, the Senate approved nearly $300 million for Indian schools and I am confident we can protect that appropriation as we begin conference negotiations later this week.

I believe that just as innovative solutions to facility problems are being experimented with for health facilities in Indian communities, we need to explore options to the Federal funds approach as well. The Indian School Construction Act is as good a beginning as I think we have done in a long time and I look forward to hearing from our witnesses.

[Text of S. 2580 follows:]

II

106TH CONGRESS
2D SESSION

S. 2580

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2000

Mr. JOHNSON (for himself, Mr. BINGAMAN, Mr. DASCHLE, and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian School Construction Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) BUREAU.—The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(2) INDIAN.—The term "Indian" means any individual who is a member of a tribe.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) TRIBAL SCHOOL.—The term "tribal school" means an elementary school, secondary school, or dormitory that is operated by a tribal organization for the education of Indian children and that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(a), and 458d).

(5) TRIBE.—The term "tribe" means any Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation, or Village Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

SEC. 3. ISSUANCE OF BONDS.

(a) IN GENERAL.—The Secretary shall establish a pilot program under which eligible tribes have the authority to issue tribal school modernization bonds to provide funding for the improvement, repair, and new construction of tribal schools.

(b) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to issue bonds under the program under subsection (a), a tribe shall prepare and submit to the Secretary a plan of construction that meets the requirements of paragraph (2).

(2) PLAN OF CONSTRUCTION.—A plan of construction meets the requirements of this paragraph if such plan—

(A) contains a description of the improvements, repairs, or new construction to be undertaken with funding provided under the bond;

(B) demonstrates that a comprehensive survey has been undertaken concerning the construction or renovation needs of the tribal school involved;

(C) contains assurances that funding under the bond will be used only for the activities described in the plan; and

(D) contains any other reasonable and related information determined appropriate by the Secretary.

(3) PRIORITY.—In determining whether a tribe is eligible to participate in the program under this section, the Secretary shall give priority to tribes that, as demonstrated by the relevant plans of construction, will fund projects described in the Replacement School Construction priority list of the Bureau of Indian Affairs, as maintained under the Indian Self-Determination and Education Assistance Act.

(4) APPROVAL.—Except as provided in paragraph (3), the Secretary shall approve the issuance of qualified tribal school modernization bonds by tribes with approved plans of construction on the basis of the order in which such plans were received by the Secretary. Such approval shall not be unreasonably withheld.

(c) PERMISSIBLE ACTIVITIES.—In addition to the use of funds permitted under subsection (a), a tribe may use amounts received through the issuance of a bond to—

(1) enter into contracts with architects, engineers, and construction firms in order to determine

the needs of the tribal school and for the design and engineering of the school;

(2) enter into contracts with financial advisors, underwriters, attorneys, trustees, and other professionals who would be able to provide assistance to the tribe in issuing bonds; and

(3) carry out other activities determined appropriate by the Secretary.

(d) BOND TRUSTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any tribal school construction bond issued by a tribe under this section shall be subject to a trust agreement between the tribe and a trustee.

(2) TRUSTEE.—Any bank or trust company that meets requirements established by the Secretary by regulation may be designated as a trustee under paragraph (1).

(3) CONTENT OF TRUST AGREEMENT.—A trust agreement entered into by a tribe under this subsection shall specify that the trustee, with respect to bonds issued under this section shall—

(A) act as a repository for the proceeds of the bond;

(B) make payments to bondholders;

(C) from any amounts in excess of the amounts necessary to make payments to bondholders, in accordance with the requirements of paragraph (4), make direct payments to contractors with the governing body of the tribe for facility improvement, repair, or new construction pursuant to this section; and

(D) invest in the tribal school modernization escrow account established under subsection (f)(2) such amounts of the proceeds as the trustee determines not to be necessary to make payments under subparagraphs (B) and (C).

(4) REQUIREMENTS FOR MAKING DIRECT PAYMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, only the trustee shall make the direct payments referred to in paragraph (3)(C) in accordance with requirements that the tribe shall prescribe in the agreement entered into under paragraph (3). The tribe shall require the trustee, prior to making a payment to a contractor under paragraph (3)(C), to inspect the project that is the subject of the contract, or provide for an inspection of that

project by a local financial institution, to ensure the completion of the project.

(B) CONTRACTS.—Each contract referred to in paragraph (3)(C) shall specify, or be renegotiated to specify, that payments under the contract shall be made in accordance with this subsection.

(e) PAYMENTS OF PRINCIPAL AND INTEREST.—

(1) PRINCIPAL.—Qualified tribal school modernization bonds shall be issued under this section as interest only for a period of 15 years from the date of issuance. Upon the expiration of such 15-year period, the entire outstanding principal under the bond shall become due and payable.

(2) INTEREST.—Interest on a qualified tribal school modernization bond shall be in the form of a tax credit under section 1400F of the Internal Revenue Code of 1986.

(f) BOND GUARANTEES.—

(1) IN GENERAL.—Payment of the principal portion of a qualified tribal school modernization bond issued under this section shall be guaranteed by amounts deposited in the tribal school modernization escrow account established under paragraph (2).

(2) ESTABLISHMENT OF ACCOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of law, subject to the availability of amounts made available under an appropriations Act, beginning in fiscal year 2001, the Secretary may deposit not more than $30,000,000 of unobligated funds into a tribal school modernization escrow account.

(B) PAYMENTS.—The Secretary shall use any amounts deposited in the escrow account under subparagraph (A) and subsection (d)(3)(D) to make payments to holders of qualified tribal school modernization bonds issued under this section.

(g) LIMITATIONS.—

(1) OBLIGATION OF TRIBES.—Notwithstanding any other provision of law, a tribe that issues a qualified tribal school modernization bond under this section shall not be obligated to repay the principal on the bond.

(2) LAND AND FACILITIES.—Any land or facilities purchased or improved with amounts derived from qualified tribal school modernization bonds issued under this section shall not be mortgaged or used as collateral for such bonds.

SEC. 4. EXPANSION OF INCENTIVES FOR TRIBAL SCHOOLS.

Chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

"Subchapter X—Tribal School Modernization Provisions

"Sec. 1400F. Credit to holders of qualified tribal school modernization bonds.

"SEC. 1400F. CREDIT TO HOLDERS OF QUALIFIED TRIBAL SCHOOL MODERNIZATION BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified tribal school modernization bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tribal school modernization bond is 25 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified tribal school modernization bond is the product of—

"(A) the applicable credit rate, multiplied by

"(B) the outstanding face amount of the bond.

"(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (1), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the day before the date of issuance of the issue) on outstanding long-term corporate debt obligations (determined under regulations prescribed by the Secretary).

"(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

"(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND; OTHER DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND.—

"(A) IN GENERAL.—The term 'qualified school modernization bond' means, subject to subparagraph (B), any bond issued as part of an issue under section 3 of the Indian School Construction Act if—

"(i) 95 percent or more of the proceeds of such issue are to be used for the construction, rehabilitation, or repair of a

tribal school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

"(ii) the bond is issued by an Indian tribe,

"(iii) the issuer designates such bond for purposes of this section, and

"(iv) the term of each bond which is part of such issue does not exceed 15 years.

"(B) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified tribal school modernization bond limitation for each calendar year. Such limitation is—

"(i) $200,000,000 for 2001,

"(ii) $200,000,000 for 2002, and

"(iii) zero after 2002.

"(2) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term includes the last day on which the bond is outstanding.

"(3) BOND.—The term 'bond' includes any obligation.

"(4) TRIBE.—The term 'tribe' has the meaning given such term by section 2 of the Indian School Construction Act.

"(e) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

"(f) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified tribal school modernization bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(g) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified tribal school modernization bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit

under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

"(2) CERTAIN RULES TO APPLY.—In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tribal school modernization bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

"(h) TREATMENT FOR ESTIMATED TAX PURPOSES.—Solely for purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a qualified tribal school modernization bonds on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

"(i) CREDIT MAY BE TRANSFERRED.—Nothing in any law or rule of law shall be construed to limit the transferability of the credit allowed by this section through sale and repurchase agreements.

"(j) CREDIT TREATED AS ALLOWED UNDER PART IV OF SUBCHAPTER A.—For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter.

"(k) REPORTING.—Issuers of qualified tribal school modernization bonds shall submit reports similar to the reports required under section 149(e).".

SEC. 5. SOVEREIGN IMMUNITY.

This Act and the amendments made by this Act shall not be construed to impact, limit, or affect the sovereign immunity of the Federal Government or any State or tribal government.

○

The CHAIRMAN. If Senator Johnson would like to speak about S. 2580, we will recognize him and we thank you for being here.

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Thank you, Senator Campbell, for affording me the opportunity to talk a little bit about S. 2580, the Indian School Construction legislation.

Senators Bingaman, Daschle, Inouye, and I have introduced legislation to establish what we believe to be an innovative funding mechanism to enhance the ability of Indian tribes to construct, repair, and maintain quality educational facilities. I want to acknowledge Frank Rapp from Buffalo Gap, SD who is representing the Dakota Area Consortium of Treaty Schools and will testify shortly. I would also like to thank Jeff Seidel with Parkway Muni Resources, who will also address the committee today, for helping to advise me on this legislation.

Representatives from tribal schools in my State of South Dakota have been working tribes nationwide to develop an initiative which—I believe—will be a positive first step toward addressing a serious crisis we are facing in Indian education. Mr. Chairman, over 50 percent of the American Indian population in this country is aged 24 or under. Consequently, the need for improved educational programs and facilities for training the American Indian work force is urgent.

American Indians have been, and continue to be, disproportionately affected by both poverty and low educational achievement. The high school completion rate for Indian people aged 20–24 was 12.5 percent below the national average and American Indian students, on average, have scored far lower on the National Assessment for Education Program Indicators than all other students.

By ignoring the most fundamental aspect of education—safe and quality educational facilities—there is little hope of breaking the cycle of low educational achievement and the unemployment and poverty that result, as well as, neglected academic potential.

The Indian School Construction Act establishes a bonding authority to use existing tribal education funds for bonds in the municipal finance market which currently serves local governments all across the country. Instead of funding construction projects directly, these existing funds will be leveraged through bonds to fund substantially more tribal school construction, maintenance and repair projects.

The BIA estimates that tribal school construction and repair backlog is over $1 billion. Confounding this backlog, inflation and facility deterioration severely increases that amount. The Administration school construction request for fiscal year 2001 was over $62 million. In this budgetary climate, I believe every avenue for efficiently stretching the Federal dollar has got to be explored.

Tribal schools in my State and around the Nation address the unique learning needs and styles of Indian students with sensitivity to Native cultures, ultimately promoting higher academic achievement. There are strong historical and moral reasons for continuing to support tribal schools and in keeping with our special trust responsibility to sovereign Indian nations, we need to promote

the self-determination and self-sufficiency of Indian communities. Education is obviously going to be absolutely vital to that effort.

Allowing the continued deterioration and decay of tribal schools through lack of funding would violate the Government's commitment and responsibility to Indian nations and only slow the progress of self-sufficiency.

Mr. Chairman, I urge my colleagues to closely examine the Indian School Construction Act and join me in working to make this innovative funding mechanism a reality. I want to thank you for the opportunity to testify before the Committee on Indian Affairs and I look forward to working with you and the remainder of the committee on this issue and many others affecting Native people in the United States and in the future.

Thank you for this opportunity to testify. I know that you have long had a great interest in exploring every possible alternative avenue that might be available to us to increase education achievement among Native people. Again, I am pleased that Frank Rapp and Jeff Seidel are here. Their testimony and their background on the finer and technical points of this bonding legislation I think will be very helpful to you, to the staff and to the committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much for your testimony. I congratulate you on introducing an innovative bill. You know, as I do, that we only have I think 16 working days before we are out of here, so we may run out of time, but I would like to tell you I really think you are on the right track. I would like to cosponsor your bill.

Senator JOHNSON. We would be honored to have your sponsorship.

The CHAIRMAN. We will do what we can to move it as fast as we can.

Senator JOHNSON. It is my hope that we can do something still this year but if not, we are creating the framework for progress next year.

The CHAIRMAN. We will take a 5-minute break if the staff could turn on the video. Senator Inouye is with us.

If the panel could come to the table? The panel consists of: Bill Mehojah, director, Office of Indian Education Programs, Department of the Interior; John Cheek, executive director, National Indian Education Association; Jeff Seidel, president, Parkway Muni Resources; and Frank Rapp, member, Dakota Area Consortium of Treaty Schools. Why don't you come and sit at the table while we play this?

[Recess—video presentation.]

The CHAIRMAN. I think I should explain that this video is dated. I understand it's a number of years old. It must have scared the death out of Bill Mehojah when they talked about all the unobligated funds the Bureau has.

For the record, as I understand it, there is no National Indian Bonding Authority but the underlying explanation of how bonding works, I assume that is the reason everyone needed to see that.

I did want to mention for the record, Bill, the committee was very sorry to hear about your dad passing away this last May. As I understand, he was the last full-blooded Kaw Indian in the Nation. He had been a tribal chairman, a World War II veteran, a

high school graduate who did great things for Indian people. I just wanted to tell you that after 30 years with the BIA, he did very fine work and we recognize that work. We are sorry to hear about his passing away.

Why don't we start with you, Bill, since I have been addressing you. Then we will go to John, Jeff, and Frank.

STATEMENT OF WILLIAM MEHOJAH, DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS, ACCOMPANIED BY JERRY SCHWEIGERT, DIRECTOR, FACILITIES LIAISON OFFICE, DEPARTMENT OF THE INTERIOR

Mr. MEHOJAH. Thank you, Senator, for those kind words about my father. I do appreciate it. Thank you very much.

Good morning, Mr. Chairman and members of the committee.

My name is William Mehojah, Jr. I am the director of the Office of Indian Education Programs for the BIA. I am pleased to be here to present the Administration's position on S. 2580, the Indian School Construction Act.

Mr. Jerry Schweigert, the director of the Facilities Liaison Office, accompanies me today from the Department of the Interior.

The Office of Indian Education Programs operates and funds 185 schools in 23 States on 63 Indian reservations. We provide an education program for approximately 50,000 students representing 220 tribes. There are approximately 6,000 buildings within the Bureau's facilities inventory, including employee housing. Nearly 4,500 of these buildings serve the Bureau's education program.

The 185 Bureau-funded schools contain over 20 million square feet and include dormitories. More than one-half of the school facilities inventory has exceeded its useful building life of 30 years. We estimate that at least 30 percent of all Bureau schools should be replaced. In addition, 45 percent of the Bureau's students are housed in portable trailers due to increased enrollment. Recent estimates to repair and replace BIA school facilities are estimated at $2.1 billion. The current backlog exceeds $979 million for code and standard deficiencies and our total replacement costs exceed $1.2 billion.

Against this backdrop, the Bureau finds it a necessity to upgrade and modernize the Bureau's aging educational facilities. The Bureau's budget request for fiscal year 2001 requested over $300 million for school construction. With this funding, we will be able to complete the final three of the 16 school projects published in the Federal Register priority list of December 1993 and the first three schools on the new priority list published in January 2000.

The Bureau has a long range, 5-year capital improvement plan to address the backlog of deferred maintenance deficiencies but needs massive funding to followup on the plan. The President has advocated a school modernization initiative and support for the renovation of the public and American Indian schools throughout the United States by providing financial incentives to those investing in school bonds. Accordingly, we support the concept within S. 2580, the Indian School Construction Act, as it would assist with providing increased funding authority and assist in our 5-year plan to address the backlog of needed improvements and repairs.

We have provided our suggested amendments in our full written testimony that has been submitted for the record. We defer to the Treasury Department on subchapter 10 as that section is not within the purview of the Interior Department or our expertise.

We are ready to work with the committee, other Federal agencies and Indian organizations to accomplish our mutual goals.

I would be happy to answer any questions you or the committee might have of me.

[Prepared statement of Mr. Mehojah appears in appendix.]

The CHAIRMAN. Thank you, Bill.

We will now go to John Cheek.

By the way, to all the people on the panel, you are welcome to abbreviate your testimony. We will include all of your written statements in the record.

STATEMENT OF JOHN CHEEK, EXECUTIVE DIRECTOR, NATIONAL INDIAN EDUCATION ASSOCIATION

Mr. CHEEK. Thank you.

On behalf of the National Indian Education Association [NIEA], we would like to thank you for allowing our association to present testimony today on school construction. NIEA represents over 3,000 American Indian leaders, tribal leaders, teachers, students and parents across the country.

This year, NIEA annually prepares an Indian education agenda for the state of Indian education and it really defines what areas NIEA will work on that year. The number one priority that NIEA came up with this year was school construction. The main reason for it really ranking at the top was there really hasn't been a concerted effort to make changes to the issues and problems that face school construction.

NIEA supports S. 2580. We believe that the bonding proposal is a viable option and it is a pilot program, so we would encourage the committee's support in moving forward with the bill. We do need to note, however, that any bonding initiative should not replace appropriations for school construction funding. If anything, it should be a combination of resources to help deal with this problem.

We are all well aware that the backlog of school construction is approaching $1 billion, if not over. We need to deal with this issue because every year we keep coming back. I know in 1998 we testified on a similar type bonding proposal. Some of the issues we brought out in 1991 are still here today as we enter the 21st Century. There were 3,500 buildings in 1991 and this was from excerpts from a 1991 Senate Committee on Indian Affairs hearing on school construction.

At that time, there were 3,500 buildings and today there are over 6,000 which represents over a 70-percent increase in the number of buildings. A good majority of these are education buildings.

Education facilities make up approximately 80 percent of the entire Interior inventory of facilities and buildings. That was in 1980. Now, it is up to 82 percent, so the number of education facilities stays pretty consistent. When you consider the increase of students attending BIA schools has jumped almost 20,000 between 1991 and the year 2000, it is remarkable that we were able to even pack

more kids into the same number of buildings over the past 10 years.

A lot of the buildings are very old. I know in 1991, there were 1,851 buildings over 30 years old, 726 were over 50 years old and over 16 were 100-plus years old. The average age for public schools nationally is 40 years. When you compare that with the lifetime of BIA facilities and structures, we are getting a lot more life out of our facilities, even though they may not have any life left in them.

Our big concern is that kids are going to get hurt. As shown in the videotape, walls are falling down and one of these days a child is going to be killed from falling debris, ceilings caving in. We had a meeting in 1998 with Indian educators who came to Washington. At that same meeting, I spoke with a principal at one of the schools and the same day his cafeteria roof caved in, falling completely to the floor. Luckily, they were on recess that week, but had school been going on that week, there could have been major injuries or even deaths.

We are trying to be proactive in this issue but it has been going on for so long, it is hard to say you are being proactive. I think the school that the schools that have come up with the school bonding initiative should be credited for coming up with a viable option for dealing with this issue.

Ultimately, we feel the Federal Government has the responsibility for providing educational facilities for Indian kids. Indian kids make up about 10 percent of the national population of American Indian children attending public schools but they also have the greatest need because they also represent the highest level of poverty in Indian country.

We would fully support this initiative. We hope the Congress and the committee will endorse it as well. We do need to remind the committee and Congress that Indian education is a trust responsibility and appropriations should also be factored in and it should be a package deal, in our opinion.

In closing, I would just like to say I appreciate the committee's indulgence in listening to our testimony today. We do have a prepared statement for the record.

We will have our annual convention coming up in Sioux Falls, SD this year. I have invited the DACs representatives and BIA to come in and hopefully we can have dialogue on the school construction.

The CHAIRMAN. What are the dates of that convention?

Mr. CHEEK. October 28–November 1. We would like to speak more on this issue because it is probably not going to get cleared up until Congress and Indian people get fired up.

Thank you.

[Prepared statement of Mr. Cheek appears in appendix.]

The CHAIRMAN. Thank you for your testimony and your support of the bill.

Before I go to Mr. Seidel, I need to go back once to Bill Mehojah. You spoke to the problem, but never did hear you say whether you supported the bill or not. Do you support the bill?

Mr. MEHOJAH. Yes; we do support the bill.

The CHAIRMAN. Let's go on now to Mr. Seidel.

STATEMENT OF JEFFREY SEIDEL, PRESIDENT, PARKWAY MUNI RESOURCES

Mr. SEIDEL. Thank you, Mr. Chairman.

My name is Jeff Seidel. I am president of Parkway Muni Resources out of Minneapolis, MN.

My firm specializes in obtaining financing for firms that have relative difficulty or do not easily qualify to get financing in the capital markets. We represent non-profit organizations, governmental enterprises and some commercial enterprises as well. A growing part of my business has become Native American business.

About 6 years ago, the membership of the Dakota Area Consortium of Treaty Schools approached me to try to find any way of solving this backlog issue. We have been talking for six years and working with Senators, their staffs, and Congressmen and their staffs on both sides of the aisle, the Treasury, the Administration and the Bureau, as well as some non-profit organizations to try to find a solution to this. S. 2580 is kind of a culmination of all that work.

I think my role today is to go over some of the specifics of the bill, the mechanics of the program, as you may. In my world, the mechanism is a relatively simple mechanism; but it does involve a program which has very wide-reaching implications.

Specifically, on the program, the Department of the Interior would be intimately involved with this program from the standpoint of oversight and approval of projects. The financing mechanism itself would be handled more in the private sector because this is what we are looking to do.

A tribe would submit a plan to the Secretary of the Interior, who would go over the plan and approve it and allocate bonding authority to that particular tribe. The tribe would go out and issue 15-year bonds which we call bullet bonds, an interest only bond where the principal would be paid at the very end. I will go through some of this in a little more detail.

There are two main areas I do want to cover on the mechanics. The first is the mechanics of the bonds themselves and the second is the role of the Bond Trustee, because the words trust and trustee have different connotations in Indian country than they do in the financial markets.

I do want to reiterate that this tape is a couple years old, and that bonding authority does not exist, and the ideas we were trying to present in that, while they were good thoughts, is not the current plan we are proposing in this bill. I just want to reiterate that.

The other thing I do want to reiterate is that bonds are not unlike a house loan, a car loan or just a loan in general. Basically, someone is lending money in anticipation of getting back that money and getting interest for lending that money. They want to make some profit obviously, so they will get back interest.

In a house or car loan situation, the house or car is put up as collateral. That is called a secondary source of payment. Under this bill and under this program, there is no secondary source of repayment. I want to iterate strongly that tribes have no obligation to make a payment on this and that the school and land on which the school sits is not collateral. It is not put up as collateral. Without that secondary source of repayment, you need a very strong pri-

mary source of repayment and we have two very strong sources here.

The first source is the principal itself, the actual money that is extended to the tribes to build the schools. The tribes we are talking about, most of them frankly don't have a dime to put toward schools and frankly, shouldn't. It's the Federal obligation to maintain and construct the schools.

What we are proposing is to develop an escrow account and fund it with $30 million. What we will do is invest that $30 million for the 15 year period.

The CHAIRMAN. The Federal Government puts in the $30 million?

Mr. SEIDEL. Yes, sir; the program will put the $30 million into the escrow account and the escrow account would be invested in very safe securities like Treasury or agencies or what we call SLGS, State and local government securities, which are very secure instruments. The interest earnings would accumulate and the $30 million after 15 years would grow to roughly $70–$75 million at current market rates. As a result of that, we can go out today and issue bonds in the amount of $75 million for various projects.

The tribes themselves would issue the bonds and would get the money for the project. The principal, which is not due for 15 years, would build to $75 million and part of that would be used to pay the bondholders, the investors, after 15 years. So it is a very secure form of repayment for the investors and they are very comfortable with that. The capital markets will embrace this very, very strongly.

They have to be compensated for extending their money for 15 years. For the years, we are looking at cash alternatives. What the Administration put forth in the public schools initiative kind of rolls into this bill; which is, instead of extending cash to pay the interest, we are going to extend tax credits. This would be a reduction in the tax liability of the bondholders. The bondholders could be individuals, funds, financial institutions, anybody who can take advantage of those tax credits.

The way it would work is simply the bondholders would extend their money, give their cash to the tribe. They build the school and every year for 15 years, they would get a pro rata share of tax credits which would reduce their liability. The amount of that is determined by what the prevailing interest rates are at the time. If it is 7 percent on a $10-million deal and they take it all, they would get $700,000 worth of tax credits annually. Those tax credits would extend for 15 years and at the 15th year, both the principal would be repaid and they would get their final tax credit allocation. That in a nutshell is the mechanism by which this would work.

The second point I wish to discuss is the role of the bond trustees. In Indian country, trust responsibility, trustee responsibility has one certain connotation and in the financial markets, it is a similar connotation but it has different specifics to it.

The key player in this is the bond trustee; they are the central core. They take in the money, the bondholders extend the money, the trustee allocates the money to the tribe on a piecemeal basis as construction is being completed. It is not here is a bunch of money, go to it. It is very specific and they have certificates of com-

pletion, inspecting architects, there are very specific things that have to happen before the trustee will release those funds to the tribe or to the contractors.

Once the money is extended and the project is completed, a final certificate of completion and certificate of occupancy will be provided to the trustee at which point, basically the project is deemed completed. Now the trustee's job kind of goes over to the bondholders and represents them and makes sure they get their money back. So it would be the role of the trustee to make sure those tax credits are appropriately applied through, I believe, the Department of Treasury, applied for the bondholders' benefit.

At the end, they would make sure that there are sufficient moneys, the principal amount that is in that escrow account, is given back to the bondholders. So they have a 15-year job here. It is to first take care of the tribe; second, to take care of the bondholders; and third, to make sure the Federal Government is taken care of as well. So they have a long-term role in this.

In fact, not everyone can be a bond trustee. You have to be given powers by the Federal Government in order to do that. These are people who deal with billions of dollars every year and this is not a new mechanism to them whatsoever.

I'd just like to mention there are other benefits to this program as well. I think the biggest one is I have been in Indian country for over a decade and have seen abuses between the capital markets and the tribes; I've also seen a fairly high level of distrust between the capital markets and tribes; and I've also seen basically a lack of activity between the capital markets and the tribes. Anything we can do to promote communication between those two entities will greatly benefit future economic expansion, diversification, whatever you will.

There are some tribes which have near equal access to the capital markets, and those are the gaming tribes who are making a ton of money. But other than those, there is really not a lot of communication. One of the far-reaching benefits of this bill will be to increase this communication between the capital markets and the tribes. Even though the tribes are not paying for these, that communication would greatly assist in future economic development for tribes.

That's it in a nutshell and I'd be happy to answer any questions you may have.

[Prepared statement of Mr. Seidel appears in appendix.]

The CHAIRMAN. We will have some questions for you. I might tell you, and you alluded to it in your last sentence, tribes historically are a little worried about moving more and more toward the private sector because they think the Federal Government will not carryout its responsibility to them; that if we put more things in place that are not Government-approved, Government-controlled or with Government input, that they will end up losing the trust responsibility. You are probably aware of that.

Mr. SEIDEL. Yes.

The CHAIRMAN. In my view, one of the weaknesses we have had in the past is we have not informed the tribes enough, we haven't let them be involved enough or educated enough on the direction

that some of this legislation moves but I am sure you are aware of that since you have been working with tribes.

Mr. SEIDEL. Yes; a very good point.

The CHAIRMAN. Now, we will go to our last witness, Mr. Rapp.

STATEMENT OF FRANK RAPP, MEMBER, DAKOTA AREA CONSORTIUM OF TREATY SCHOOLS

Mr. RAPP. Mr. Chairman and members of the committee, thank you for allowing us to be here.

My name is Frank Rapp. I am from Pine Ridge Reservation. I am an enrolled member of the Oglala Lakota Sioux Tribe. I am presently the vice president of the Dakota Area Consortium of Treaty Schools.

We started with this bonding initiative a little over 5 years ago and as you can tell, it has changed colors quite often and quite a bit in order to make it a program that can be workable. I am proud to say that we were the first organization to finally make everybody realize that we have a big problem here. We are now up to a point that it is a crisis.

We have been patient for years, every year we have come here and said, we need more money. Every year, we are told you will get more money next year and it hasn't happened. Unfortunately, we have heard a lot of people say that we will just appropriate the funds necessary and that hasn't happened.

What we are providing for you folks is just the way to leverage funds. We realize that the allocations and the appropriations that have been given to us are limited. This is the way for us to be able to take care of an emergency situation now. You can't wait any longer.

We are seeing a lot of accidents. Personally, I have seen a lot. What I am asking this committee to realize is that no longer can we wait until a child is killed. No longer can we wait until there is a horrible catastrophe. As Mr. Cheek pointed out, we are past the point of being proactive, we now have to do something.

I am from the poorest county in the United States. One of the biggest problems we have is a lack of education. Our educational facilities are absolutely deplorable. Schools that I have worked in are presently in place that were condemned over 10 years ago. What we are talking to you about is a Federal school system. Based on the treaties that we have, the Executive orders, statutes and so forth, not only do you have a legal obligation but you have a moral obligation to take care of these children.

I hear on the news the politicians are talking about setting up bills to help public schools, even talk of vouchers to private schools, when in fact, your Federal school is probably the worse school system in the Nation. You need to fix the Federal schools first, lead by example. Don't be looking around to see where we have to fix other things.

As Mr. Mehojah has pointed out, we have many, many children in portable classrooms. Originally, this was a good idea because it took care of an immediate need but what we have found is these temporary classrooms have become permanent classrooms. We have classrooms which, according to design, should last 10 years

which are now lasting over 20 years. As a matter of fact, they weren't even safe to begin with.

It is not cost effective. It is a deplorable wasting of good money after bad money. Portable classrooms fall apart real fast. Handicapped accessibility consumes a lot of the room. You have more and more operations and maintenance costs on these which is another big problem that we have with our Indian schools.

The operations and maintenance funding has been constrained for so many years that we are now constraining constrained budgets and instead of for every dollar these schools need, they are only getting about 60 cents to operate and maintain. More money goes to operation, less money for maintenance, of course your buildings fall apart faster and faster. Although this is not a part of the bill, I would like the committee to realize that this is a significant problem you need to deal with in the very near future.

Generations ago, our leaders signed treaties with the U.S. Government and because of those treaties, we gave up a lot of land, we gave up a lot of rights, and a lot of people gave lives for the final settlement of those treaties. In the Fort Laramie Treaty of 1868, which deals with the tribe I am from, we had guaranteed provisions for education and it hasn't been fulfilled.

The only way I can see this happening now is by you fulfilling the Federal Government's promise and responsibility by helping us pass this legislation so that we can leverage the little amount of money that we get in order to fund as many schools as we can.

It is important to note that we are not, as a part of this bill, trying to replace any existing appropriations; we are not trying to circumvent or do anything to replace the school list. All we are trying to do is leverage funds so that we can take what resources we have and expand them as much as we can in order for us to get our schools.

The trouble is our children are living in poverty and it is difficult for many people to see that. They are not here, they don't go to your house to play with your kids. It seems as if they don't exist. I know many of you, if you had a chance, if your children or grandchildren were to go to Marti Indian School or Jiboa Indian School or Lone Manor, any of these schools, you wouldn't have your kids go there. Most of our people don't have that choice. My children are fortunate enough that I am in a financial situation that I can help them. They drive 400 miles a week to go to school. They drive that distance because the conditions at the schools closer to us are so bad that I want them to be as educated as they can be.

Unfortunately, a lot of times I hear of these kids in the public schools say, that is my school and our kids just walk around saying, I go to school over there. The conditions of the schools are bad. I know that this is redundant to what everyone has said and we have these facts and figures, but we are tired of watching kids walking from one portable classroom to the lunch room and having frostbite. That happens.

We have children in portable classrooms that are so dangerous and located so close to each other that if one catches fire, the rest of them will. Many of you know our firefighting situation on our reservations. We are located so far away from those types of services that once a fire starts, it can be 20 to 30 minutes before any

rescue units are there. By that time, we have a horrible, horrible situation.

I remember back in 1991 when the Lone Man School gymnasium burned down because the boilers were bad. It took over 20 minutes for the first fire trucks to get there. Unfortunately, we didn't have the water supply necessary to handle their units and to put out the fire.

At this time, I am pleading for you to help us. We have been patient. Many people are angry out there. Something has to be done. This is a way you can help. We are not asking for you to bend rules, break rules or anything like that. All we're asking is what we've always asked, you have an obligation to our children, fulfill it. If you can't come up with the direct funding, which obviously based upon history, you can't, let's leverage the funds. Let's try something that other people—municipalities, public schools—are doing. Give us that opportunity.

Again, I thank you for the time.

[Prepared statement of Mr. Rapp appears in appendix.]

The CHAIRMAN. Thank you for your testimony, Mr. Rapp.

I might tell you that the members of this committee serve on this committee because we are concerned. We all have a choice of committees to serve on as you might know. There are 14 of us on here, both sides of the aisle. I don't think anyone has fought harder than Senator Inouye to help Indian people nationwide. So you're preaching to the choir when you tell us that we need to help you. We know that. We are 14 of 100 and there are 435 on the other side of the Hill.

I think when we have budget constraints and different tugs of war over where we put money when we are trying to reduce the deficit and get our fiscal house in order, very often Indian people unfortunately don't have the political clout to be heard here, but the people in this committee have always listened to the tribes and always listened to Indian people. We will do our best.

I think some, as I have, taught school. I taught 10 years in schools, 4 years at the college level and the rest at junior high up through senior high level. In the 1970's, I was active in the National Indian Education Association, so I know the problem. I think any teacher and certainly any school psychologist will tell you kids can't learn when the wind is blowing through the walls and the snow is coming through the roof, and they went to school hungry in the first place. Most of us know that we have a responsibility and we ought to step up to the plate and do a better job, but it is a big picture here. We are not the only ones that make the decisions.

I might also tell you that sometimes just a better facility doesn't get it done either. There's got to be better education, more committed teachers, better nutrition for youngsters through the school lunch program and certainly if they have problems in their home life, that affects their ability to learn too. So it's not just whether we put more money into building schools or not. We are trying to do that but it is a huge picture that we don't have all the answers for. You might be aware of that.

Let me ask a few questions of each of you. I'll start with Bill Mehojah.

I want to ask you to tell me a bit about the priority list. Many tribes have complained they don't know how schools are ranked on the BIA's list. What criteria does the Bureau use to determine that priority list, Bill?

Mr. MEHOJAH. The priority list I mentioned was established in 1993. There is another list that was developed in January 2000 and put in the Federal Register that contains another 10 schools that were ranked according to need based on an application process. Schools completed an application, there were various factors involved with that—unhoused is an example, age is another, safety and health concerns, backlog of repairs, things like that.

The CHAIRMAN. So the ones that need it the worst are the ones that go to the top of the priority list?

Mr. MEHOJAH. That is correct.

The CHAIRMAN. Are all the tribes aware of how that is done and do you have a good information system so they know where they are in that mix?

Mr. MEHOJAH. We would hope so. We have submitted the application to all of our education line officers, and they went out and talked and met with the tribes, with schools and school boards. We also sent out a mailing through the Federal Register process informing them of the criteria, so there are various ways we did it. I think there were 98 schools that actually applied for a new school.

The CHAIRMAN. We are aware there is a huge backlog. In fact, it is interesting that both the presidential candidates have talked publicly about addressing that backlog for Indian schools. I hope we can move forward with it, do you have anything in place where you're going to try to chip away at that billion dollar backlog if we try to provide more money?

Mr. MEHOJAH. Yes; I think one of the things that Mr. Rapp mentioned that is of concern to us is the operation and maintenance funding. He is correct that if we only allocate funds for new school construction and improvement and repair, and forget about funds to also maintain those buildings, we are creating a problem down the road. So we are very concerned about that as well.

Yes, we are chipping away at it. We have that five-year plan for capital improvements.

The CHAIRMAN. John, I mentioned a while ago about some Indian tribes worrying about the Federal Government trying to get out of its responsibilities if we put more and more things in place in the private sector. Does NIEA have any concerns with this bill that it might do that?

Mr. CHEEK. I think it would be worse if we didn't try anything. It's a pilot program. As long as people realize that, I think we should at least try to see what works and what doesn't.

The CHAIRMAN. Regarding Indian children's percentile ranking and their test scores, have they improved in the last ten years or so?

Mr. CHEEK. Somewhat I believe. I think in the areas of reading and math they are beginning to climb. In respect to BIA schools, they have made a concerted effort to try to raise those scores, so we give them credit for that. A lot of the problem with Indian education across the board is the level of funding really determines

how much you're able to pay for classes, pay for teachers and unless we have consistent funding over a long period of time, we'll only see up and down trends. This year we have a 500-new teachers program being implemented right now. The last I heard they have 568 teachers going into the teaching pipeline.

The CHAIRMAN. Indian teachers?

Mr. CHEEK. Yes; that's one of the weaknesses with the Federal funding unlike mill levies at the local level that support your local public schools, they are steady, they go on but the funding for Indian education is based on how the votes work out every single year. When it's down, it's all over the place and it's difficult to set any long-term goals or priorities or standards or anything when you never know how much money you're going to be able to get next year. I know it's one of the real problems.

The CHAIRMAN. Mr. Seidel, did I understand you to say you now do some investment work with Indian tribes?

Mr. SEIDEL. Yes, sir; I have. The most recent was a delight to work on. We just completed a $23-million financing for a fisheries facility in Danbury, WI for the St. Croix Chippewa. What they are going to do is an extremely controlled environment for rearing fish, aquaculture. Unfortunately, we were not able to do it with tax exempt bonding because the Code doesn't allow aquaculture for Indians. It is a very specific thing.

The CHAIRMAN. Aquaculture?

Mr. SEIDEL. Aquaculture is the rearing of fish, the Code does not allow for Indian aquaculture facilities to be financed tax exempt. It is very specific in the Code. I was humored by it after I got done being angry about it. This tribe would not have been able to borrow $23 million were it not for the fact it has a very successful gaming operation.

The double-edged sword with gaming—I have seen many things—it has helped tribes. I've seen more pride when the money is flowing and they can make more use of the moneys for infrastructure. For now, we're talking second tier economic development.

The double edge there is that for the most part across America, most people think that all tribes are rich now because there are a handful, literally a handful of tribes that do have very successful gaming operations and therefore, they believe all the Indians are rich.

The other thing they believe is why don't the Pequots give money to the rest of the Indian Nation. My response is that is like Wisconsin giving Minnesota its taxes that it collects. People out there don't understand there is differentiation among tribes.

The CHAIRMAN. I asked you that question because I visited some tribes during the August break, the Crow in Montana and the Northern Cheyenne and by chance, the Northern Cheyenne Tribal Council was interviewing investment people to try to invest some funds they had accumulated. One of the questions asked was if the tribes have cultural or religious differences or concerns with where the money is being invested, is that a consideration by the investment group?

Mr. SEIDEL. I am not in that part of the business but I can address that. My responsibility and job is more to develop financing structures for tribes. However, I can address this.

In all aspects, there's churches, nonprofit organizations, all have moneys they try to invest and a lot of them look to what the funds are investing in. The biggest one I have seen in my experience is those funds which actually will not invest in tobacco companies. They just say, "we will not invest in tobacco companies." That hits some hot buttons with some organizations which say I will invest in you because of that or others, I will not invest in South African companies, when it was an issue. So there are funds that are developed that in particular will not invest moneys in particular areas.

The CHAIRMAN. But you do take into consideration tribal concerns?

Mr. SEIDEL. Yes.

The CHAIRMAN. I have a few more questions but I understand Senator Inouye has a shortened time schedule. Would you like to ask some questions?

Senator INOUYE. I have just one concern. I support this measure. The Administration's on page four says this language creates a new loan guarantee program. Mr. Seidel, you say it doesn't. Does it or does it not create a new loan guarantee program?

Mr. SEIDEL. This does not create an ongoing obligation of the Federal Government. The principal amount is an up-front, funded escrow account, a one-time funding for this particular program. So the $30 million would be advanced from the Federal Government and that is on the principal portion and that is it. So we're done with that portion.

On the interest component, the tax credits, it's an ongoing administration of the program but there is no ongoing Federal obligation of the program. So as far as using the words Federal guarantee or loan guarantee, I wouldn't say that is completely accurate because that implies the Federal Government has an ongoing, every year type of obligation. That is not the case the way we're looking at it.

Mr. MEHOJAH. There are a couple of concerns. One is we would like to see a separate appropriation for this bill because unobligated funds present a problem for us, internally. A lot of times funds are unobligated for a special project that has been justified in the President's Budget or project that is underway and yet not all funds have been totally drawn down. To make it a clean way of doing business, it would be better to have appropriations made up front.

The other concern that we have is the liability of the Federal Government. We want to make it clear that there would be no liability by the Federal Government, by the Department of the Interior or the Bureau of Indian Affairs to pay back any of the principal on any of these bonds. I think that is the reason that language was put in there. We addressed it in our testimony.

Senator INOUYE. Do you believe educational assistance to Indian tribes is part of the trust responsibility?

Mr. MEHOJAH. I believe it is a part of our responsibility to provide that. It is shown clearly in various documents like the Con-

stitution, policies by the Federal Government, so I believe it is our responsibility to provide education.

Senator INOUYE. Your position you just enunciated would permit you to avoid that responsibility?

Mr. MEHOJAH. I don't think our position in our testimony would decrease our responsibility for providing an education program.

Senator INOUYE. Because you said you want this clear statement that neither BIA nor any other Federal agency will be liable for repayment should the tribes fail to repay?

Mr. MEHOJAH. Yes.

Senator INOUYE. In other words, if a tribe goes broke, it's their hard luck, that you don't have any trust responsibility? I'm surprised. I'm really surprised.

Mr. MEHOJAH. Yes, Senator; We support the bill, we support the concept and we think if it is carried out in the way that it would be amended according to our testimony, we wouldn't think that would be a problem but we want to make sure that is in there to avoid any problems down the line.

Senator INOUYE. Do you know from past experience that if you relied upon the Congress to provide $30 million a year, it won't happen?

Mr. MEHOJAH. We would hope that it could happen. We have seen a large increase that the Senate has provided in the construction account this year. We thank them very much for that. We don't want to see that $30 million come out of that money that has been proposed by the Senate for the bonding purpose.

Senator INOUYE. If we are going to go through with this, I'd like to see a loan guarantee so that the tribes can be guaranteed that under any circumstances, if they should fail, Uncle Sam will take up the tab because I cannot imagine the Government of the United States saying, I'm sorry, you people went bankrupt, that's your hard luck.

The CHAIRMAN. We might be able to adjust that bill.

Mr. Rapp, your statement says the worse school system in the country is run by the BIA. Partly that is our fault too by not providing enough resources but in your opinion, will new or repaired facilities enable Indian communities to turn that around or is more going to be required? I mentioned that schools are part of it, nutrition is part of it, health is part of it, family cohesiveness, all that stuff. Do you agree with that?

Mr. RAPP. I agree fullheartedly with that. Our schools are the center of our communities. Not only do we provide education for the children, but we provide psychological services, medical services, it is the place where we hold wakes and funerals. Our schools are the center hub. It is going to take a lot more than a new school.

The CHAIRMAN. I visited Lame Deer to visit their new high school. They also had some of these portables as a high school. You spoke about drafty, windy, falling down, dangerous looking things and that had been their high school for the last 15 years almost. They just opened their new high school and I went to see it. They had a student body presentation and I visited the youngsters and teachers and some of the parents. I was amazed that school, as many schools on reservations, is the central part of the community. I thought I noted a new tone of pride and enthusiasm and interest

and all kinds of things that go along with a nice facility. I think you are right.

Mr. RAPP. I agree fullheartedly. A new facility does help. As I said earlier, kids can say, that is my school, they can be proud of it. You talked about roofs leaking and so forth, and all the problems they have. It is so hard to learn in that type of environment. It's just not conducive.

The CHAIRMAN. Does that have something to do with what the Bureau calls "sick building syndrome." Are you aware of that term?

Mr. RAPP. Yes; I am aware of that term. Not only do we have schools that are structurally unsound, we have schools that have very poor ventilation, contagious infections travel rapidly, viruses, head lice, allergies, all types of problems when you have mold buildup and dust and everything else that comes in. These building cause sickness, not the sickness where you cut off a finger, but long-term illnesses of allergies and whatnot that these children have and it affects them when they have headaches and they don't feel well, their stomach is upset, on and on.

The sick school concept is not just within our Indian school system. We find that throughout the United States with a lot of these older facilities. When you don't have adequate ventilation and kids are sitting in 95 to 100 degree rooms in the summer or wearing coats in the winter, they're overcrowded—I don't remember the figure Mr. Mehojah pointed out but we are overcrowded. Our population has increased but great expansions are not allowed. They are cramped in there. We get all these different illnesses and sicknesses. That's why we have to provide so much auxiliary services—school nurses, health programs.

In a sense, we also cause a lot of our children's disabilities just by the structure itself. Many disabilities our children have would be special ed, if you look at it would be health problems. We can fix those if we have adequate funding.

The CHAIRMAN. Thank you for your comments.

I was giving a graduation speech for an Indian school in Montana a couple of years ago and I was trying to make it a motivation kind of speech about doing well in school and how much it would help later on. I ended by telling them you don't have to be the best in the world but you should be the best you can be.

Afterwards, I was walking around the streets of the agency and this little guy came up to me about 12 years old and he had been in the crowd that day. He said he heard me speak. I said, "Are you getting good grades?" And he said, "Heck, no, I'm not getting good grades but I'm being the best I can be." I told him I didn't get good grades when I was his age either.

Thank you for appearing here. We will keep the record open until we get out of here, for 2 weeks if you have any additional comments. Submit those and we will put them in the record. We will do the best we can with this bill knowing we're running out of time. In case we can't get it through, I'm sure Senator Johnson will want to reintroduce it immediately when we come back. I will certainly help him if something goes wrong and we can't move the bill.

With that, thank you, and this committee is adjourned.

[Whereupon, at 10:45 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, I want to thank you for scheduling a hearing before the end of this Congress on the school facilities crisis in Indian country, and particularly the possibility of creating a pilot bonding program to help meet this need. I also want to commend Senator Tim Johnson for his leadership and perseverance in developing a tribal school bonding approach.

The Federal Government has a trust responsibility to provide an education to Indian children. This is not a luxury or some discretionary choice. We have a trust responsibility to Indian children, just as we have a responsibility to provide for an education for the children of our military personnel residing on or near military bases. Unfortunately, we have not lived up to that responsibility very well. We are woefully short of the funds that are needed to keep these schools up to standard, and that lack of funding is reflected in the poor conditions of BIA-funded schools. The General Accounting Office reported in 1998 that BIA schools are in the worst physical condition of any group of schools in our country, even inner-city schools. In fact, 62 percent of BIA schools need extensive repair or replacement.

I've talked many times about the conditions of the Ojibwa Indian School, the Cannon Ball Elementary School, the Standing Rock High School, the Marty Indian School, and countless other schools that I could mention. These are schools we would be ashamed to send our own children to, but we force 51,000 American Indian children to attend them every day.

Not surprisingly, the deficiency in facilities carries over into deficiencies in student performance. The annual drop-out rate for students attending BIA schools is nearly three times the national average, and more than one-half of all BIA students are not proficient in math or language arts. The simple fact is that children cannot learn when they are worrying about PCBs, rather than their ABCs.

As my colleagues know, I have pushed very hard, along with Senator Domenici and others, for a significant increase in funding for BIA school construction. I'm pleased that the Senate Interior Appropriations Subcommittee, on which I serve, has finally taken a step in the right direction by providing $276 million for BIA school replacement and repair in this coming fiscal year. This amount is a $143 million increase over the current level and would allow us to replace the next six schools on the BIA Priority List.

Frankly, I think we can and should do even better than this. We have a responsibility to these kids, and I would prefer that we simply appropriate the amount of funding necessary to eliminate the school replacement backlog.

But even with the funding increases in the Senate bill, there will continue to be a nearly $700 million backlog in repair and replacement of BIA schools. That's why I am also willing to consider other mechanisms, such as the pilot bonding project authorized in Senator Johnson's legislation, to help alleviate this backlog. However, I want to make it clear that I feel such efforts should supplement, not supplant, our efforts to significantly ramp up funding through the appropriations process for

the direct construction of BIA-funded schools. Therefore, I will continue to work through a number of avenues to address the school facilities crisis in Indian country.

PREPARED STATEMENT OF SUSAN MASTEN, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians [NCAI], the oldest, largest, and most representative Indian organization in the United States, I would like to provide this statement for the record on the September 6, 2000, hearing in support of S. 2580, the Indian School Construction Act.

The 185 schools funded through the Bureau of Indian Affairs [BIA] system provide educational services to more than 50,000 Indian students in 23 States. The BIA school system is one of just two systems, along with schools funded through the Department of Defense, for which the Federal Government is directly responsible.

In December 1997, the General Accounting Office [GAO] confirmed what Indian Country has known for years—that BIA schools are woefully dilapidated and often dangerous for students and teachers. In a report issued at the request of Senator Dorgan [D-ND], the GAO found that, compared to other schools nationally, BIA schools are in generally poorer physical condition; have more unsatisfactory environmental factors; more often lack key facilities requirements for education reform; and are less able to support computer and communications technology.

For many tribal leaders, school officials, and Indian students, these findings came as no surprise. More than one-half of the BIA school facilities inventory has outgrown its useful building life of 30 years. While appropriations for replacing the oldest, most dangerous schools have lagged behind demonstrated need, more schools have fallen into disrepair at a rapid rate, a rate that has been exacerbated by a failure to adequately fund facilities operations and maintenance.

At the time of the GAO report, the BIA estimated that the cost of repairing its school facilities was $754 million. Today, this number has climbed to over $800 million. To put this amount into context, the fiscal year 2001 budget request for BIA education construction was $330.5 million, including $126.15 million for replacement school construction, $30 million for a bonding initiative, and $171.2 million for facilities. improvement and repair. The House-passed fiscal year 2001 Interior Appropriations bill would provide only $120 million for education construction, including $49.7 million for replacement school construction and $67.8 million for facilities improvement and repair. The Senate-passed bill would provide $276.6 million for education construction, including $121.1 million for replacement school construction and $152.3 million for facilities improvement and repair. Unfortunately, funding the entire budget request—something which neither the Senate nor the House has done—would only meet about one-half of the repair need that currently exists.

Given the reality that Congress is unlikely in the foreseeable future to provide enough direct funding to fulfill its trust responsibility to address BIA school repair needs, it is incumbent upon Congress to explore other avenues that would provide the necessary resources. One such approach is bond financing.

The Indian School Construction Act, S. 2580, would establish a bonding authority that tribes could access for school construction and renovation projects. It would establish a $30-million escrow account, using unobligated BIA account funds, to pay principal on the bonds. The interest portion of the bonds would be paid to investors through Federal tax credits, which would extend for the 15-year life of the bond.

NCAI applauds the efforts of Senator Johnson [D-SD], who worked closely with the Dakota Area Consortium of Treaty Schools in developing this innovative proposal, and joins the National Indian Education Association in support of the bill.

While NCAI believes that S. 2580, if enacted, would be a valuable component of an overall plan to eliminate the BIA school construction backlog, it is critical that Congress not use passage of the bill as an excuse to reduce direct Federal appropriations for the repair, replacement, and maintenance of schools in Indian Country. After all, even public school systems are able to pass only one-third of the bonds that they need, and they have a local tax base. That said, the bonding authority under the percent Indian School Construction Act would be a positive step in allowing tribes to exercise increased governmental powers in the providing critical services to their members.

With respect to applicability of the bonding authority, NCAI recommends that the committee work to ensure that all BIA-funded schools, including both contract and grant schools. In addition, we urge the committee to ensure that the $30 million in obligated BIA funds that would be used for the bond program would not displace resources that have been targeted to other high priority projects that would benefit

tribes. One possible solution to this issue would be to have a one-time direct appropriation of $30 million that would be placed into a school modernization escrow account.

To date, the Federal Government has failed to meet its special trust responsibility to ensure that Indian children attend school in a safe and modern facility. However, enactment of the bonding authority contained in the Indian School Construction Act, combined with substantial increases in direct appropriations for school construction, repair, and maintenance, would represent a major step toward meeting its obligations. NCAI commends the committee for conducting a hearing on this most important legislation looks forward to working with the committee to enact it as quickly as possible.

Testimony of
William Mehojah
Director, Office of Indian Education Programs
Bureau of Indian Affairs
U.S. Department of the Interior
on
S. 2580, the Indian School Construction Act
before the
Committee on Indian Affairs
United States Senate

September 6, 2000

Good morning, Mr. Chairman and members of the Committee. My name is William Mehojah. I am the Director for the Office of Indian Education Programs at the Bureau of Indian Affairs (Bureau). I am pleased to appear before you today to present the Department's position on S.2580, the Indian School Construction Act.

Before I explain some of the Department's concerns, I'd like to share background information regarding the Bureau's education facilities.

The Bureau is the primary agency of the Federal Government charged with the responsibility to administer policy and operation for the Indian education programs at 185 federally recognized Tribal or Bureau-managed schools. A critical part of the education program is school facilities, which Indian students attend.

The Bureau's facilities inventory is large, over 6,000 buildings, of which nearly 4,500 serve the Bureau's education program. The 185 Bureau-funded schools consist of over 20 million square feet of space and include dormitories, employee housing quarters, and other buildings providing educational opportunities to over 50,000 students. The Bureau operates or provides education opportunities to Indian students in 23 states through Self-Determination contracts, compacts and education grants. The education program is critical to Indian communities as pointed out by the President in Executive Order 13096, which calls for creating educational opportunities in our nation for Native Indian students.

More than half of the school facilities inventory has exceeded its useful building life of 30 years and, as a result, numerous deficiencies exist regarding health, safety, disability access, classroom size, computer and communications technology, and administrative office space. Extensive repair or total replacements are needed for these deteriorated structures, which no longer meet national building codes and standards. The existing backlog of education facility repair needs is over $800 million.

National studies of public schools have shown that the condition of education facilities have a definite influence on a student's ability to learn. The majority of the Bureau's schools are old and

in poor condition, and the physical environment has adversely impacted the education of Indian students who must attend these institutions.

It is against this backdrop that the urgency and necessity to upgrade and modernize the Bureau's aging educational facilities becomes apparent. The President has proposed the use of School Modernization Bonds in support of the renovation and construction of public and Native American schools throughout the U.S. School Modernization Bonds pay interest in the form of federal tax credits to investors, making the bonds interest-free for school districts. Under the President's proposal, $200 million of such bonds would be authorized for BIA-funded schools in both FY 2001 and FY 2002. Of this $300 million, up to$30 million may be used to defease the principal on school modernization bonds. Using $30 million to create sinking funds to repay the principal of the School Modernization Bonds will allow about $60 million of the proceeds from these bonds to be used for construction and repair of BIA-funded schools.

S. 2580 would allow tax credit bonds to be issued only in those cases where sinking funds had been created out of the $30 million. Tribal governments should have the opportunity to use the remainder of the $200 million in bonding authority even without these sinking funds to leverage their resources and issue bonds. We would recommend a provision to allow for the use of the remainder of the bonding authority.

If the discretionary program is funded at the requested level, the three remaining schools of the total 16 school projects published in the Federal Register priority list of December 1993 will receive full construction funding. In addition, the first three schools on the new priority list published in January 2000 would also receive full funding. Another round of applications and selections is being contemplated to keep pace with Congressional appropriations at an anticipated rate of 4-6 school projects per year. We are also exploring possibilities for sharing costs with tribal partners in an effort to obtain non-Federal resources and speed construction of replacement schools.

The Bureau has made good progress in the management and administration of its school construction program during the last several years. The long-range 5-year Capital Improvement Plan addresses our backlog of code and standard deficiencies, but the need is great and will require massive outlays of resources if measurable results are to be made in stopping further deterioration and eliminating the backlog. The Bureau is placing strong emphasis on capital asset planning and investment control. The Bureau's construction processes were re-engineered several years ago with a resultant success in reducing the time to complete a school from an average of 6-7 years down to 2-3 years. This achievement was recognized in February 1999, when the Bureau facilities construction program received the Vice President's Hammer Award for excellence in re-engineering the new school construction process.

We support the concept within S.2580, the Indian School Construction Act. The Administration has endorsed a separate bipartisan proposal sponsored by Reps. Nancy Johnson and Charles Rangel, introduced as H.R.4094. This legislation includes all the components of the national School Modernization Bonding Initiative including the authority for tribal governments to issue $200

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million of tax credit bonds in both FY 2001 and FY 2002 for BIA-funded schools. While we can support separate legislation for BIA-funded schools that is consistent with the goals of the national Initiative, we have several concerns with S. 2580. The following provides a list of the Department's concerns with the current language in S. 2580:

- **Section 2 (4) Definition of Tribal Schools**
  The definition of tribal schools should be expanded to include BIA operated schools. As written, the language would extend bonding authority to only those tribes with schools operated under contracts, grants, and by cooperative agreement.

- **Section 2 (5) Definition of Tribe**
  The bonds should be issued by Indian Tribal Governments as defined in section 7701 of the Internal Revenue Code.

- **Section 3 Issuance of Bonds (a) In General**
  The phrase "new construction" may be interpreted to connote the establishment and building of a new school, instead of replacement or rehabilitation of BIA's current 185 elementary and secondary schools.

- **Section 3 Issuance of Bonds (b) Eligibility** needs to be clarified as to how the comprehensive survey mentioned in the legislation would relate to the current BIA backlog of code and standard deficiencies, space guidelines and or education specifications, which currently regulate school facilities. Further, we ask that the phrase "and cost" and "critical health and safety related" be inserted to language in Sec.3. (b) (2) (A) as follows: "contains a description ***and cost*** of the ***critical health and safety related*** improvements, repairs, or new construction..."

- **Sec. 3. (b)(3) Priority**
  The Department agrees with the language that says the priority will be given to projects described in the Replacement School Construction priority list, however, we are concerned that the current language makes no reference to how priorities will be established for Facilities Improvement and Repair (FI&R) projects.
  Concern: We have a concern about whether these projects will also be based on a BIA National FI&R Ranking List, and if this list will be established based on need relating to health and safety code and standard deficiencies.

- **Sec. 3. (b) (4) Approval**
  The language currently reads "... approved plans of construction will be based on the order in which the plans are received by the Secretary..."
  Concern: We are concerned that this might give (1) tribes that have financial resources an advantage over poor tribes; (2) not correspond to the National Priority List order for Replacement Schools by allowing more of a first come first served basis on consideration; and (3) not correspond to the National FI&R lists established based upon need as shown in

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backlog of code and standard deficiencies.

- **Sec. 3. (c) Permissible Activities (1)**
(1) enter into contracts with A/E's, contractors, ... in order to determine needs of Tribal schools.
Concern: We are concerned that there is no language provided on the qualifications of the people listed, i.e., professional engineers. We suggest more accountability with reference to the inspection of the final product. We advocate that the facilities should be inspected by those knowledgeable of space requirements, safety codes, etc.

- **Sec. 3. (d) Bond Trustee (4) (A)**
The language "..the tribe shall require the trustee, ... to inspect the project ... or provide for an inspection of that project by a local financial institution to ensure completion of the project"
Concern: The current state of the language here provides no provision for BIA inspection and clearance by the Office of Facilities Management and Construction. The BIA should have review and inspection of oversight of education specifications, planning, design and the final inspection authority.

- **Sec. 3. (f) Bond Guarantees (2)(A)**
The language here states "...notwithstanding any other provision of law, subject to the availability of amounts made available under any appropriations Act, beginning in fiscal year 2001, the Secretary may deposit not more than $30,000,000 of unobligated funds into a tribal school modernization escrow account." Neither the House nor the Senate appropriated FY 2001 funds for the School Bonding Initiative.
Concern: The Department has serious concerns with this section of the proposed bill that is broadly worded and authorizes the use of unobligated funds from any account under any appropriations Act to be made available for the Bonding Initiative. This could result in displacement of funding for high priority projects within the same appropriation or within any appropriations Act.

- **Sec. 3. (g) Limitations (1)**
Concern: As drafted, this language creates a new loan guarantee program that would be subject to the Federal Credit Reform Act of 1990, as amended. In addition to implementation issues, we are concerned that the Federal Government would ultimately be responsible for repayment on the bonds if the tribes are absolved of the responsibility to repay principal in the event that something goes wrong. We would recommend a clear statement in the bill that "Neither BIA nor any other Federal agency will be liable for repayment should the tribes fail to repay principal on the bonds."

- **Sec. 4. Expansion of Incentives for Schools**

Subchapter X — Tribal School Modernization Provisions. The Department is not in a

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position to comment on this section as we recognize that this is within the purview of the Treasury Department and should be evaluated by them.

We understand that Treasury has additional concerns with S. 2580 and will be submitting a letter to the Committee shortly.

We look forward to working with you and Committee staff to support a bill that is consistent with the goals of the Administration's proposal for School Modernization, and to accomplish our mutual goal of providing quality educational opportunities to American Indian youth in a contemporary setting conducive to productive learning.

This concludes my statement. I will be happy to answer any questions you may have.

NATIONAL INDIAN EDUCATION ASSOCIATION
700 N. Fairfax St., Ste. 210 • Alexandria, VA 22314 • Phone: 703-838-2870 • Fax: 703-838-1620
E-mail: niea@mindspring.com • Web site: www.niea.org

STATEMENT OF THE
NATIONAL INDIAN EDUCATION ASSOCIATION
SUBMITTED TO
THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON S.2580, THE INDIAN SCHOOL CONSTRUCTION ACT

September 6, 2000

Submitted by:
John W. Cheek *(Muscogee Creek)*
Executive Director

The National Indian Education Association (NIEA), the oldest national organization representing the education concerns of over 3,000 American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, parents, and students is submitting this statement on legislation impacting Indian school construction. On behalf of our president, Dr. Gloria E. Sly and Board of Directors we thank you for the opportunity to present testimony today. We would also like to thank Chairman Campbell, Vice-Chairman Inouye and members of the committee for holding this important hearing on S.2580, the Indian School Construction Act.

Funding for Indian education and Department of Defense schools is the sole responsibility of the Federal Government while public education is a combination of state and federal resources. Local Education Agencies (LEAs) and their surrounding communities have the ability to pass bond initiatives in order to build or repair local school facilities. Tribal and Bureau of Indian Affairs (BIA) schools, on the other hand, must rely on the federal government to ensure their academic and construction needs are being met. The extent to which the federal government has assumed this responsibility can be exemplified in the backlog of construction and repair/renovation needs now estimated at over $1 billion. The area of school construction and repair remains problematic as recent annual appropriations have historically targeted less than ten percent of the total need.

In 1998, NIEA testified in support of a similar school bonding initiative which failed to gain Congressional support. While we support the bonding initiative, it should not preclude the responsibility of the federal government to provide education services and resources for American Indians and Alaska Natives. The trust responsibility encompasses the learning environment as well and must be a safe conducive place for learning. A combination of direct

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funding and bonding authority would do much to alleviate the backlog and repair needs of Indian schools, therefore NIEA supports the proposed legislation.

Our 1998 testimony documented findings from a 1991 Indian Affairs Committee hearing on school construction which we repeat here for the record along with current information:

> April, 1991: Excerpts from David J. Matheson, Director, Office of Construction Management, DOI, prepared statement:

- The facilities inventory is comprised of approximately 3,500 buildings containing 19,800,000 square feet (excluding quarters) in over 400 locations throughout the United States. *In 2000, the inventory is comprised of 6,227 buildings containing 26.4 million square feet. Of this amount 4,495, or 72 percent of this inventory are education buildings.*

- Educational facilities comprise approximately 80 percent of the facilities in the inventory. *The BIA's FY2001 Budget Justification reports that education facilities make up 82 percent of the inventory.*

- These facilities serve over 300 federally recognized Indian tribes located in 26 states, with educational facilities for approximately 40.000 Indian youths attending approximately 180 different schools. *The BIA reports that there are over 330 federally recognized tribes located in 23 states, with educational; facilities for more than 50,000 students in 185 schools.*

- Of the 3,500 buildings in the facilities inventory, 1,851 are over 30 years old, and of this number, 726 are over 50 years with 16 of these being 100 plus years old. *The BIA's reports that of the 4,495 education buildings in its inventory, 50 percent are over 30 years old and more than 20 percent are over 50 years old. In 1998, the BIA reported 16 buildings over 100 years old. In 1999, the average age of the main instructional buildings of mainstream public schools was 40 years.*

- Ten of the twelve Area Directors reporting directly to the Deputy Commissioner of Indian Affairs have facility management staffs responsible for data collection, technical assistance, minor improvement and repair, safety, operation and maintenance oversight, and other administrative activities of the BIA's facilities program. *Area Directors are now called Regional Directors.*

- In addition, there are facility management offices and staff at approximately 84 agency office and 400 facilities locations. Each of these offices is responsible for day-to-day operations, maintenance, safety quarters, and other facility related activities.

The U.S. Department of Interior, Inspector General, James B. Richards, also stated in 1991:

- During the past four years we have issued two final reports and two draft reports relating to this subject area. These reports reveal and describe a deplorable state of Indian Education facilities, which are often structurally unsound, in disrepair and poorly maintained.

- Further, the degraded conditions of Bureau of Indian Affairs classrooms, dormitories, study and recreational areas and other related facilities has undoubtably had a profound adverse effect on the quality of education being provided to Indian children.

- Two recent audits we completed, currently in draft form, entitled "Implementation of the Education Amendments of 1978," dated February 1991 and "Facilities Maintenance," dated April 1991, confirm the fact that the Bureau and the Department have failed to correct life-threatening safety deficiencies, code violations, and hazardous health conditions existing in schools, dormitories, and other buildings Bureau-wide for Indian students.

- These current audits show that Indian children have not been provided with facilities that are safe, healthy, or conducive to a quality education. In many instances, Indian school facilities are often so deplorable as to impede the educational process.

- These standardized tests resulted in scores that ranged from the 24th percentile on grades 3 through 9 to the 32nd percentile for high school seniors. In other words, we note that similar test scores for students as all grade levels were exceedingly low. We did note that similar test scores for Indian children attending public school were somewhat higher.

During the 1991 hearing, one witness indicated an estimated backlog in BIA maintenance and repair deficiencies of approximately $850 million. The 1998 estimate, according to the BIA Fiscal Year 1999 Budget Justification, projected a backlog in the Education Facilities Improvement and Repair Program at $695 million and $63.8 million in Education Quarters for a total of $758 million. The immediate conclusion is that few financial resources have been focused on the school facilities dilemma over the past several years. The fact of the matter is that problems with all facets of education construction at Bureau funded and operated schools have been evident for decades. The Education Amendments of 1978 (Title XI of Public Law 95-561), which govern certain BIA services, require that education facilities be safe and adequate to serve the needs of Indian children. The 1991 Inspector General's report did, however, bring to light a pattern of neglect and the cumbersome administrative process inherent in all construction-related decisions. The deterioration of education facilities continues to this day and will plague any real advancement toward educational excellence until solutions are found.

The 1997 General Accounting Office study titled 'School Facilities, Reported Condition and Cost to Repair School Funded by the Bureau of Indian Affairs' documented that BIA schools more often reported building features such as roofs, plumbing, and heating, ventilation, and air-conditioning systems to be inadequate than did other schools. Almost four-fifths of the responding BIA schools reported having at least one inadequate building feature. In comparison, about one-half to two-thirds of the other groups of schools reported at least one inadequate

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building feature. The report also identified a total backlog and repair need of $754 million. It is estimated that the cost of $754 million in deferred maintenance grows by $22.6 million per year due to inflation, and approximately $33.9 million per due per year due to natural aging and deterioration, for an annual cost of $56.5 million per year in growing needs.

Another factor that aggravates the resolution of the backlog of replacement school construction projects is the length of time it takes to complete even a minimum number of projects. In FY1993, the Congress approved 16 schools on the Replacement School Construction priority list. Of the 16 schools, 13 have been funded through the construction phase and expected to be completed in the second quarter of FY2001. The remaining 3 are scheduled to begin by the third quarter. The time factor notwithstanding, inconsistent funding levels have characterized the school construction program

Appropriations determine how many schools can be added to the replacement school pipeline. Funding for all categories of education construction for the last decade ranged from $31 million in FY1997 to possible $180 million in FY2001. Even at $100 million in annual funding, it would take 10 years to complete the current backlog in school construction and repair/renovation projects. This doesn't take into account those additional schools coming "on line" pursuant to the newly created priority list of school construction projects. In early 2000, the Bureau of Indian Affairs reviewed 105 applications from schools requesting school construction funding. A final list of 96 applications were ranked in order of priority. The final slate identified 51 percent of all BIA schools in need of repair, renovation or replacement. This compares with 25 percent for all public schools nationally. The FY2001 administration request for BIA's education construction programs is $300.5 million, $167.3 million over 2000. The House has recommended $120 million while the Senate recommended $277 million.

An FY2001 Administrative initiative called the School Renovation program proposed $1.3 billion to help local educational agencies renovate their schools. Of this total amount, $50 million would be provided to approximately 118 LEA's that have 50 percent or more of their children in average daily attendance on Indian lands. Of the remaining $1.25 billion, both $125 million in grants and $1.125 billion in loan subsidies would be provided to LEA's. This loan subsidy would leverage approximately $6.5 billion in 7-year no-interest loans. Renovation funded through these grants and loans could include such projects as roofs, climate control systems, or planning. Unfortunately, the Labor-HHS-Education appropriations committees in both the House and Senate have recommended no funding for this program.

This year, we continue to support any effort that proposes to correct long-standing deficiencies that prevent the achievement of American Indian and Alaska Native youth. Sadly, the issues identified during the last decade continue to symbolize the state of Indian education facilities as we enter the 21st Century.

S.2580, the Indian School Construction Act

On May 17, 2000 Senator Tim Johnson and three co-sponsors introduced S.2580, the Indian School Construction Act. The bill proposes to establish a bonding authority to use existing tribal education funds for bonds in the municipal finance market which currently serves local governments across the nation. Instead of funding construction projects directly, these existing funds will be leveraged through bonds to fund substantially more tribal school construction maintenance and repair projects. This pilot program, would allow eligible tribes the authority to issue tribal school modernization bonds to provide funding for the improvement, repair, and new construction of tribal schools. A similar request last year during the FY2000 budget debate failed to generate the support needed in the appropriation's committee and died.

To be eligible to issue bonds under this proposal, a tribe would need to submit a construction plan to the Secretary of Interior containing a description of the needed repairs and maintenance requirements of a school based on survey of the school's needs. Schools on the Bureau of Indian Affair's school construction priority list, will receive priority under the bond proposal. The life of the bonds are for fifteen years, at which time, the principle will need to be paid by the issuer of the bond.

We note that the bill appears to serve only contract and not grant schools. We would recommend that the bill be made as inclusive as possible so that all Indian schools have the same opportunity to participate in the program.

NIEA would like to thank the committee for allowing us the opportunity to speak on this important issue. Given the history of similar funding proposals, the outlook is not good for passage of much-needed school bond dollars. The climate in Congress has not been conducive to this or any other new school bonding/construction initiative, though we are hopeful that this proposal has some of the concerns addressed that previous versions didn't. Indian schools and tribes do not have the requisite tax base to fund school construction projects. Even, public school districts have a difficult time obtaining passage of bonds. Public schools on average are able to pass only one third of the bonds they need. Studies have shown that districts with a high proportion of high poverty students have facilities that are in the poorest condition. With American Indians and Alaska Natives having the highest rate of poverty among U.S. citizens, the state of their educational facilities are indeed among the worst in the nation.

As a closing example, NIEA held one of its spring meetings in Washington, DC in 1998 and invited several Indian educators and schools to attend. I spoke with a principal who came in for the event and he informed me that just the same day, a roof had blown off their cafeteria. Luckily, the school was on recess and no one was hurt. This incident could as well have happened during a school day during lunch with dozens of students in the area. As a new school year begins, we urge the committee to support this legislation and other Indian school construction funding initiatives.

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Parkway Muni Resources

Investment Banking Consultants

5128 Dupont Avenue South
Minneapolis, MN 55419
phone: (612) 824-8565
fax: (612) 824-3943
e-mail: parkway@real-time.com

TESTIMONY OF JEFF SEIDEL
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

HEARING ON S. 2580 (Tribal school bonding bill)
September 6, 2000

Mr. Chairman and Members of the Committee, my name is Jeff Seidel and I am the president of Parkway Muni Resources, a firm located in Minneapolis, Minnesota. Our firm specializes in obtaining financing for non-profit, governmental and commercial enterprises, particularly those that do not easily qualify for conventional financing in either the commercial banking or the investment banking markets. Currently, many of my clients are American Indians, who as we all know, often have a difficult time financing non-gaming activities in the conventional markets.

Today, I welcome the opportunity to comment on the unenviable task of financing the construction and capital improvements of BIA School Facilities throughout the nation. While most public schools are funded through locally generated taxes, based primarily on property values within a particular school district, the same does not hold true for almost all Indian School Districts. For the most part, as many of us know, the responsibility for funding new construction or capital improvements to BIA Schools rests entirely with the federal government.

For a number of years now, many proposals have been brought forth in an attempt to reduce the nearly $1.0 billion backlog in BIA School construction and improvements. Some of these proposals included the concept of leveraging existing appropriations, which would have raised money through the issuance of debt, with the repayment source being future appropriations from the New Construction and the Facility Improvement and Repair accounts of the Bureau. The issuance of bonds supported by tax revenues (or moneys derived from taxes) has been used for years in public schools and also on the county and state levels. Many of us on today's witness panel have sought the same solution on the federal level, only to find tremendous resistance from both the Department of Treasury and from those in the budgeting process. Other financing vehicles, such as

contracting with the General Services Administration to lease schools over a period of time, and leveraging those lease payments (as has been done for many federal buildings), or utilizing the capital reimbursement program authorized by PL93-638, as amended, have each met with opposition from both the capital markets and the federal agencies involved. Direct appropriations are, of course, the simplest solution, but appropriations are obviously quite limited given the gargantuan need that continues to grow exponentially. Even in these prosperous times, only two to three schools are funded each year. At that pace it is doubtful that the federal government will ever reduce the backlog. We have looked at all of the alternatives we could think of, and the solution contained in S. 2580 is the culmination of that effort.

Specifics for the Tribal School Bonding Bill – S. 2580

S. 2580 represents efforts by both the public and private sectors to find at least a partial solution to the backlog for Tribal Schools. The program created by S. 2580 would provide tax credits to pay interest and a cash escrow account to pay principal on bonds, which are issued for the purpose of funding building renovation and new school construction at BIA and grant schools.

In order to receive a bond allocation under S. 2580, a Tribe would submit a plan of construction to the Secretary of the Department of the Interior. The necessary plan would demonstrate that a comprehensive survey has been undertaken of the construction and renovation needs and would describe how the Tribe would ensure that proceeds from the bond issue are used for the purpose intended by the proposal. After reviewing the proposal, the Secretary of the Interior will allocate a designated amount of bonds to the Tribe, and the Tribe will access the public markets for the purpose of raising funds for the project. It should be noted that those projects on the BIA's prioritization list shall be given first priority to qualify, and then other projects can be qualified on a first-come, first-served basis. (This should not be construed as an endorsement of the current priority list. We believe there are inequities in the current list, but these should be addressed separately.)

Under existing public laws, Tribes may contract with local architects, engineers and construction firms, among others, for the purpose of determining the physical plant needs of the Tribal school and for the design and engineering of such facility(ies). Under this bill, the Tribe will also have the authority, once the Secretary of the Interior has provided a bond allocation, to contract with a financial advisor, underwriter, attorney, trustee, and any other professional who would be able to assist the Tribe in issuing bonds to the public sector.

Under S. 2580, individual Tribes will be allowed to issue taxable bonds for the purpose of new construction or facility improvement and repair, with the following collateral provided by the bill. As you know, Tribes already have the statutory right to issue both taxable and tax-exempt bonds, but this collateral is for the benefit of the bondholders.

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The Principal portion of these taxable bonds would be set aside up front in an escrow account. The bill authorizes as annual appropriation of $30 million for this purpose. Once a tribal plan has been approved, the Tribe would be able to issue bonds on an "interest only" basis for a period of 15 years, at which time the entire balance of principal would become due and payable. The funds in the escrow account would be invested in very secure investments (such as SLGS, Treasuries, and Agencies), that would ensure funds would be available at that time to pay bondholders. It is also common practice to have a national accounting firm confirm that the funds would be available.

Under current market conditions, $30 million invested for 15 years could grow to about $75 million. Thus, the effect of this bill would be to allow the Secretary to approve up to $75 million in projects in the first year of the project. Leveraging federal funds in this way would help to reduce the backlog more quickly than simply appropriating funds directly without increasing the cost to the federal government.

The Interest portion of these taxable bonds will be paid in the form of a "tax-credit" to be provided by the federal government through this bill. The total amount of tax-credits to be extended to new and future bondholders will depend on the amount of bonds issued, and the prevailing market rate on the bonds. For each of FY 2001 and FY 2002, the sum of $200 million in bonds would be authorized for issuance. It is not expected that the program, using the principal escrow account, will utilize all of this bonding authority. But there may be alternative uses for this authority among Tribes which may have some cash to pledge to a separate escrow account, with that cash building in value over the 15 years as described above. Thus, some Tribes could take advantage of the interest portion of this program, even if no additional funds are available to pay the principal on the bonds.

For the bondholders, instead of receiving interest in the form of cash, they will receive a tax credit against their federal income tax liability. If $75 million in bonding allocation is approved, the investors will receive about $95 million in tax credits over 15 years, at current market conditions. And the remaining tax credits may be used for future financing if more money is funded in the escrow account.

The bill also provides detailed definitions of the roles of bond trustees, needed to successfully issue these bonds. The bond trustee would act as a gatekeeper of funds transfers, both from investors to contractors, and from the federal government to the investors (the escrow funds and the tax credits). While not specifically mentioned, the method of transfer of funds is provided through industry standard, and can be written in the bond indenture to avoid timing issues.

It is made very clear that under NO circumstances will the issuing Tribe or the federal government have an ongoing obligation to repay the bonds, either the principal or the interest (other than the federal government providing the tax credits on an annual basis), and that the sovereign immunity offered to the Tribes, through treaties and the like shall remain in place. Furthermore, neither the education facility(ies) nor the land the

facility(ies) are on shall be mortgaged or used as collateral for the bonds. In the unlikely event of a default, the bondholders shall not have any recourse to the Tribe nor its assets.

We do not think any of these arrangements, or the lack of a federal "guarantee," will scare off investors. To the contrary, our experience in this field tells us that the appropriated escrow, with the statutory conditions on its management and use, will attract eager investors from the private markets. The bonds issued under S. 2580 will be seen as good, safe, and sound investments.

Other Benefits: The proposed bonding process would greatly assist Tribal Schools in obtaining timely funds for their projects. This bill will also help connect Tribal communities to investment banking markets. Granted, the source of repayment for these bonds does not come from the Tribes. However, having worked in Indian Country this past decade, I see the hesitancy many investment banking firms have in doing business with Tribes, and also the relative distrust Tribes have for the capital markets. Many abuses have happened. This bonding bill will assist in breaking these barriers down, which is essential if the Tribes are to pursue economic development successfully.

The other benefit for Tribes is that this program would finally allow for the design and construction process for Tribal Schools to proceed locally, using bonded architects, engineers and construction companies. It would permit use of the trust departments of private financial institutions to maintain control over disbursement and re-investment of the funds. It would allow Tribal Schools to raise "seed" money for professional services such as architects and engineers, through the issuance of debt guaranteed by the eventual issuance of these bonds. And it would involve federal oversight but without the tremendous delay in the design, engineering and most importantly, the funding of the projects.

Because local architects will be used, the designs should take into account the local environment and other considerations unique to the area and culture. Also, local contractors would use Indians and other minorities to help build the school, providing employment and developing job skills. But most importantly, local firms which are familiar with designing and building public facilities would complete the project in an accelerated manner, as compared to the current system, and thus remove the added costs of construction-delay inflation. Under S. 2580, we could give them a budget, provide them with mandatory deadlines for this pilot program, and let them work with the local Tribal School District to complete the project on a timely basis.

Thank you for this opportunity to testify today in support of S. 2580. I understand there are some technical amendments which are under consideration by the sponsors, and having had an opportunity to review them, I believe the bill would be greatly improved if those changes were made. I would be pleased to respond to any questions you may have.

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Points of Interest:

Some of what has been written about the Tribal School situation in the past is as follows:

- There exists a unique political and legal relationship between the government of the United States and governments of Indian Tribes. Indian Tribes have a legal relationship with the United States government which is set forth in the Constitution of the United States, Treaties, federal statutes and judicial decisions.
- The Constitution of the United States gives the Congress plenary (full) powers over Indian affairs, and through treaties, statutes, executive orders, course of dealing and custom, the United States has undertaken a trust obligation to protect Indian Tribes and tribal resources.
- The trust responsibility includes the duty to protect, preserve and enhance tribal assets and resources, and to assist Indian Tribes in improving the socio-economic status of Tribes and their members in an effort to encourage economic development and strengthen powers of self-government.
- By fostering the development of accommodative financial markets and tribal access to capital, the federal government can assist in providing fundamental tools to greater economic development and powers of self-government.
- The need for financial capital by Indian Tribal governments is acute, and the federal government should work to facilitate capital creation and those mechanisms that will permit the tribes, with the assistance of the federal government, to issue debt instruments as a means of financing Tribal government needs.
- For the benefit of Indian people across the United States to increase their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and develop their intellectual and mental capacities.
- It is essential that institutions of education be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities.
- Institutions should be enabled to finance indebtedness to preserve and enhance the facilities for the purposes of education.
- There is approximately 16,600,000 square feet of space in Indian schools nationwide.
- There exists a backlog in Grant Schools and Bureau of Indian Affairs School facility improvement, repair and new construction needs of $754 million as of March, 1998. It is estimated that the cost of the $754 million in deferred

maintenance grows by $22.6 million per year due to inflation , and approximately $33.9 million per year due to natural aging and deterioration, for an annual total of $56.5 million per year in growing needs.

- The replacement value for Tribal schools is estimated to be $1.83 billion.
- The magnitude of the dollars and number of projects has risen to a level where these projects cannot be funded by current Facility Improvement and Repair and New Construction program funds.
- With the physical condition of Grant and Bureau schools deteriorating, and with the population within these schools increasing, there is an immediate need for funding of these projects.
- It is the purpose of this bill to provide a measure of assistance and an alternative method of financing to enable the tribal institutions of education to provide the facilities and structures which are sorely needed to accomplish the purposes of this bill.
- True self-determination in any society of people is dependent upon an educational process which will ensure the development of qualified people to fulfill meaningful leadership roles. This bill will incorporate the commitment of the federal government to guarantee payments of principal (through a direct appropriation of an escrow fund) and of interest (through the allowance for future tax-credits to investors), so that Tribes with negligible resources may issue bonds to fund school improvements and/or new construction. .
- This bill will also incorporate the commitment and support of Tribal self-determination by utilizing PL93-638, Section 102 and PL100-297 to allow tribes to manage their own construction projects.

DACTS
Marty Indian School
PO Box 187
Marty, SD 57361-0187

September 6, 2000

Mr. Chairman and Members of the Committee,

My name is Frank D. Rapp. I am an enrolled member of the Oglala Lakota Nation, and am from the Pine Ridge Reservation. I am the Vice President of the Dakota Area Consortium of Treaty Schools, a collective organization of Grant Schools throughout North Dakota and South Dakota. I have been working on the development and advocacy of this concept and bill for over five years. Why I have worked so long and hard is simple. The Federal government has not and will not appropriate the amount of funds necessary to renovate, repair, and replace our schools. They are now so bad that they are "accidents waiting to happen."

I live in the poorest county in the United States. Our condition of poverty will remain for future generations unless our children receive the educational opportunities available to the rest of the nation.

I support The Indian School Construction Act, S. 2580. This bill enacted into law will provide the financial resources to give our Indian children the education they have a right to (and the United States government has the responsibility to provide) so that our children can contribute to our society.

There exists a unique political and legal relationship between the government of the United States and governments of Indian Tribes. Indian Tribes have a legal relationship with the United States government which is set forth in the Constitution of the United States, treaties, federal statutes, and judicial decisions. The Constitution of the United States gives Congress plenary powers over Indian affairs; and through treaties, statutes, executive orders, course of dealing and custom, the United States has undertaken a trust obligation to protect Indian Tribes and tribal resources. Our most valuable resource is our children.

The trust responsibility includes the duty to protect, preserve and enhance tribal assets and resources, and to assist Indian Tribes in improving socio-economic development and strengthening powers of self government. A primary emphasis of this trust responsibility is to provide quality education. Indian self-determination can only be conducted in a proper manner by an educated membership. The entire realm is the proper development of our children through a well organized educational system which is sufficiently funded.

Telephone: (605) 384-5431 • FAX (605) 384-5933
DACTS web-site: http://members.xoom.com/DACTS/ • e-mail:dacts@xoommail.com

In order to increase the commerce, welfare, and prosperity of Indian people across the United States, and to improve their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and develop their intellectual and mental capacities. The first step, of course, is to make sure that their schools are not only safe but also conducive to learning.

We are talking about a "federal" school system. Politicians are debating what they are going to do to help public school systems, and now there are discussions of vouchers to private schools. How can this be when the worst school system in the country is run by the federal government through the Bureau of Indian Affairs? We suggest you fix your own educational system and make it a model for public schools. Lead by example.

There is approximately 16,600,000 square feet of space in BIA funded schools nationwide. As of March 1998 there is a backlog of improvement, repair, renovations, and replacement of $754 million. Industry standards indicate that deferred maintenance grows by $22.6 million per year due to inflation, and approximately $33.9 million per year due to natural aging and deterioration, for annual total of $56.5 million per year in growing needs.

This bill is about time not money. We all know that BIA-funded schools are a federal responsibility and an obligation, and now they have become a federal liability. Congress must now take their responsibility seriously. No longer can the health and lives of our children be held in jeopardy because you fail to adequately fund Indian education. Now is the time to pass this bill. Now is the time to face this crisis and manage it, not ignore it. In a time of budget surplus, we need to be investing in ourselves by rebuilding an infrastructure which has suffered since the onset. Now is the time to Protect Our Children.

The infrastructure of the BIA funded schools is deplorable. And not only are the schools not conducive to learning, they are unsafe for our children and the staff. At times past, Congress has funded school renovation, repair, and replacement in a menial way. This has caused a backlog of repairs that is close to $1 billion. I have worked over 18 years in the BIA educational system and have watched the repeated piecemeal repairs which were quick fixes, that took care of only the symptoms of the buildings problems. I have seen very expensive, yet worthless, portable classrooms built and fall apart in a few years. Good money has been thrown away after bad.

Too many times has the operations and maintenance funding for our schools been constrained. The Administration has not requested the real need, and Congress has not appropriated sufficient money to keep these buildings operational. The old saying "an ounce of prevention is worth a pound of cure" goes well in this situation. This has compounded the structural problems and safety problems dramatically. Now is the time to fund and fix our schools.

It is obvious (based upon history) that Congress is not going to appropriate the money necessary to take care of this horrible problem. We have been asking and telling you for years that you need to do something to help us. I hope this is the time and the place for the right decision to be made. Year after year we have been told that Congress will appropriate the necessary funds, and that has not happen. Now is the time to seriously look at our proposal. The leveraging of limited funds

which provides more funds for this critical need is a moderate, yet creative, solution. One that we personally use when we buy a house, and one which public schools, municipalities, and states have been using for years.

The irony of this underfunding of Tribal schools is that you as responsible senators are sitting on a "time bomb." As the conditions get worse children are going to get hurt, our even possibly die, because of the condition of their school. We will have to live with the grief and sorrow and you will have another statistic. Who can you look to, to blame? The answer is apparent. It is now in your hands. Are going to wait until a child dies in a federally funded/governed school before we decide if their education is as important as the rest of the children in these United States? You must decide whether this bill can help us improve the conditions of our school. We all know the answer is yes. Are you willing to make a bold move and favor this bill?

We in the Indian country are doing all we can with the limited and constrained budgets you have appropriated. Now is the time for you to support, advocate, and pass this bill. For years now we have been told to wait because "next year Congress will appropriate more money." Every year we find there is not enough. Every year we are told to wait, and again there is not enough. This cannot go on any longer. You have the opportunity to change this vicious cycle. Passing this bill will allow us to leverage limited funding on an annual basis to resolve this crisis. It will allow the Bureau of Indian Affairs to work with our tribes in developing a long term, strategically planned replacement program for our schools over a 40 year cycle.

In the bill, it is made very clear that under no circumstances will the issuing Tribe or the federal government have an ongoing obligation to repay the bonds, either the principal or the interest, (other than the federal government providing the tax credits on an annual basis), and that the sovereign immunity offered to the Tribes, through treaties and the like shall remain in place. Furthermore, neither the education facilities nor the land that facilities are on shall be mortgaged or used as collateral for the bonds. In the event of default, the bondholders shall not have any recourse to the tribes nor its assets.

This is a bill for the purpose of funding a specific dollar amount of projects which are part of the tribal school project backlog. This program provides tax credits to pay interest and a cash escrow account to pay principal on bonds, which are issued for the purpose of funding building renovations and new school construction.

I can go over the mechanics and specific details of this bill, but it would be redundant to do so with the testimony of my colleagues. What is important to remember is that we are not just talking about spending money. We are talking about the future of our Indian children and their Tribes. We are not only talking about a moral obligation, but a legal obligation. We realize that too often we are insignificant and not important within the full realm of the federal government. We realize that the halls of Congress are pounded by people asking for what they feel is important. This is very important to us.

Generations ago our leaders signed treaties with United States government. These were peace treaties and offerings to which we are all bound today. We gave up land, we gave up rights, and

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we gave our lives for the conditions of those treaties. In the Fort Laramie Treaty of 1868, the federal government guaranteed provisions for the education of our children and the education of their posterity. The passage of this bill by Congress is but one step to fulfill the federal government's promise and responsibility to our tribes.

Our children come to school with this huge spirit to learn. The federal government kills that spirit by putting them in overcrowded buildings that have torn up tile, broken windows, and a lack of heat and cooling systems. Children have to put on coats and jackets four to eight times a day to go to different classes, to go to lunch, and to go to the nurse (if we are lucky to have one.) Many of our children are from rural areas with no indoor plumbing. The school not only educates the children, but assists in personal hygiene and health. Showers are provided. The education of these children is not only reading, writing, and math, but how to take care of yourself physically and emotionally.

We expect our children to appreciate and be thankful for their education. What should they appreciate? A building that passes no fire codes, health inspections, or safety inspections? A building that has only one window and door on one side? A desk that is surrounded by bowls and buckets to collect water dripping from the ceiling? A playground they share with snakes, rodents, hazards, and occasionally a prairie fire? How do they learn respect and to appreciate anything when they are expected to learn in an environment such as this?

How are the children supposed to take pride in their education when they do not know anything more than the school being an old run down building. Water faucets and toilets frequently do not work. Pieces of the buildings are falling off. School is dark and dreary.

We have educators, parents, and society making disabilities. Poor children are no different than affluent children. The poor just do not have the opportunity to look beyond where they live. When you live like this, as a child, you think that this is how everyone else lives. They do not miss going to a park because they do not realize they should have one. They do not miss going to a library because they do not know what one is until they go to advanced school. What is a computer lab? What is a science lab?

What about the little five-year-old girl at the Ojibwa Indian school in Belcourt ND that suffered from frost bite by leaving her classroom and having to walk outside to the lunch room? What about all the children and the staff that are constantly breaking bones and suffering from bruising because they are falling on slick ice? What about all the portable classrooms that are placed so close together that if one classroom burns they all will go up in flames trapping people? There is no way to get a fire truck to those situated in the back, and of course there is no central fire control system. What about all the children that are exposed to hazardous conditions on a daily basis?

They are living in an area of poverty because you cannot see them. They do not go to your house to play. It seems they do not exist. They are not your problem because you do not see them. If you had a child, grandchild, or niece or nephew at Ojibwa Indian School, Marty, or Loneman you would do what you could to improve the school. But then again, because you have a choice, you

would not have them in that school. Our children have no choice. Your children say "That is My School!" and our children say "I go to school over there."

This is not a problem on a piece of paper. The problem is on your back door; but you have chosen to not open the door in the past. Right now is the time for you to open that door and reach out to the children and show that you care. Show them that even though you cannot see them, you know they are there. Let them know that there is a big hand reaching down. It is not going to hurt them, but provide educational security to them by passing this bill into law.

The United States government has succeeded in its initial role. You have kept us dependent. You continue keeping our children from moving forward in personal, social, emotional, educational, and intellectual growth. And you have done it very well! It is time to offer our children the same opportunities as other children in the United States. They are no different in how they see, think, feel, hurt, laugh, and cry.

The federal government is "Of the People; By the People and For the People." As Senators, you are the United States government. Do not repeat history. Support this bill.

At this time before you, once again, is a man pleading for you to understand that we need your help. Just because it is the way it is, I stand before you again saying it is the responsibility of the federal government to properly fund our schools. You are the only funding source we have and we need more. The Indian School Construction Act is the answer. There is no question about it.

Frank D. Rapp
Vice President, Dakota Area Consortium of Treaty Schools.